

Message Text

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C O N F I D E N T I A L SECTION 1 OF 2 MANAGUA 3674

E.O. 11652: GDS
TAGS: PGOV, PINT, NU
SUBJECT: ELECTORAL REFORM: AN OVERVIEW

REF: (A) MANAGUA 0926, (B) MANAGUA 3128, (C) WELTER/TUCKER
TELECOM 2 AUGUST 1978

SUMMARY: A CONTINUING DEMAND OF THE OPPOSITION CONTINUES TO BE REFORM OF THE NICARAGUAN ELECTORAL SYSTEM. A COMPREHENSIVE PACKAGE OF CONSTITUTIONAL RENORMS--BOTH CONSTITUTIONAL AND OF ELECTORAL LAW--WAS PASSED IN THE LAST SESSION OF CONGRESS AND PRESENTED TO SOMOZA, WHO APPROVED SOME ASPECTS AND REJECTED OTHERS. UPON PASSAGE OF THE AMODIFIED REFORMS BY THE CURRENT SESSION OF CONGRESS, THY BECAME LAW. FAR FROM RESOLVING THE MATTER, THESE REFORMS DO NOT ADDRESS THE MOST IMPORTANT PARTS OF A MEANINGFUL STRUCTURAL REFORM OF THE ELECTORAL SYSTEM. END SUMMARY.

1. AS REPORTED REFTTEL A, IN FEBRUARY, SOMOZA ANNOUNCED THAT HE WOULD RECOMMEND REFORMS TO ELECTORAL LAW (REQUIRING PARTIAL AMENDMENT OF THE
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CONSTITUTION) TO OPEN THE ELECTORAL SYSTEM TO ANY GROUP WISHING TO PARTICIPATE. IN APRIL, CONGRESS PASSED A SERIES OF REFORMS WHICH WERE THEN SENT TO SOMOZA FOR COMMENT. (NOTE: NICARAGUAN CONSTITUTION REQUIRES ALL LAWS AMENDING IT TO PASS IN TWO CONSECUTIVE SESSIONS OF CONGRESS, WITH THE PRESIDENT BEING REQUIRED TO REVIEW AND COMMENT UPON THEM BETWEEN SESSIONS. END NOT.) SOMOZA THEN HAD UNTIL ONE MONTH AFTER THE CONVENING OF THE

CURRENT CONGRESSIONAL SESSION TO REVIEW AND COMMENT UPON THE REFORMS BEFORE RETURNING THEM TO CONGRESS.

2. ON 7 JULY, SOMOZA ANNOUNCED THAT HE WAS RETURNING THE REFORMS TO CONGRESS, HAVING APPROVED OF THREE OF THEM AND REJECTING THE BALANCE. AS REPORTED REFTTEL B, SOMOZA SAID THAT THE REJECTED REFORMS SHOULD FORM THE BASIS OF A DIALOG BETWEEN THE GON AND THE OPPOSITION TO NEGOTIATE FURTHER ELECTORAL REFORM. THE MODIFIED REFORM PACKAGE WAS PASSED BY CONGRESS AND PUBLISHED IN THE OFFICIAL GAZETTE, THEREBY BECOMING LAW AS OF THE DATE OF ITS PUBLICATION.

3. THE FIRST REFORM OF THE ORIGINAL PACKAGE WAS A CHANGE IN WORDING OF ARTICLE 74 OF THE CONSTITUTION, THE ARTICLE OUTLAWING THE COMMUNIST PARTY. ARTICLE 74, AS ORIGINALLY FOUND IN THE CONSTITUTION, READS, "THE STATE PROHIBITS THE FORMATION AND ACTIVITIES OF THE COMMUNIST PARTY AND THOSE PARTIES THAT MAINTAIN SIMILAR IDEOLOGIES, AS WELL AS ANY OTHER PARTY ORGANIZED ON AN INTERNATIONAL BASIS. INDIVIDUALS WHO BELONG TO THEM MAY NOT HOLD ANY PUBLIC OFFICE, WITHOUT PREJUDICE TO OTHER PENALTIES THAT THE LAW MAY PROVIDE. NEVERTHELESS, THE STATE SHALL PROTECT ANY LAWFUL ACTIVITY INTENDED FOR THE RECONSTRUCTION OF CENTRAL AMERICAN UNITY." AS ORIGINALLY PROPOSED, ARTICLE 74 WAS TO BE CHANGED TO READ,
"THE STATE GUARANTEES FREE POLITICAL ORGANIZATION AND ALL LAWFUL MOVEMENTS PROMOTING THE RECONSTRUCTION OF CENTRAL AMERICAN
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UNITY." SOMOZA PROPOSED THE FOLLOWING WORDING: "THE STATE GUARANTEES FREE POLITICAL, ORGANIZATION, PROVIDED IT PROMOTES THE MAINTENANCE OF A DEMOCRATIC AND REPUBLICAN SYSTEM OF GOVERNMENT." THIS WAS THE WORDING FINALLY ACCEPTED BY CONGRESS.
(COMMENT: THE ORIGINAL REFORM WOULD HAVE OPENED THE ELECTORAL REFORM WOULD HAVE OPENED THE ELECTORAL PROCESS TO ANY GROUP,

EQUIRING ONLY THAT IT ADVOCATE CENTRAL AMERICAN UNITY. THE FINAL WORDING REMOVES THIS BOILER PLATE REQUIREMENT, BUT REQUIRES SOCIALISTS, COMMUNISTS, OR ANY OTHER GROUP TO ESCHEW NON-DEMOCRATIC MEANS OR INTENTIONS IF THEY ARE TO PARTICIPATE LEGALLY, END COMMENT)

4. THE OTHER REFORMS WHICH FINALLY WERE ENACTED WERE OF ARTICLES 330 AND 331. ARTICLE 330 FORMERLY READ, "TO EXERCISE THE RIGHT TO VOTE, CITIZENS MUST BE DULY REGISTERED." IT NOW READS, "THE EXERCISE OF THE VOTE WILL BE REGULATED BY THE STATE." ARTICLE 331 WHICH INCLUDED THE ELECTROAL LAW AS PART OF THE CONSTITUTION WAS AMENDED TO DIVORCE ELECTORAL LAW FROM IT. (COMMENT: ARTICLE 330 IS A CRUCIAL ONE IN THAT, WITHOUT AN EFFECTIVE VOOTER IDENTIFICATION AND REGISTRATION SYSTEM, THE POSSIBILITIES FOR ELECTION FRAUD REMAIN

GREAT. ARTICLE 331, IN DIVORCING ELECTORAL LAW FROM THE CONSTITUTION, PRESUMABLY FACILITATES THE PROCESS OF CHANGING THE LAW. END COMMENT)

5. THERE WERE SEVEN REFORMS WHICH WERE REJECTED BY SOMOZA. ARTICLE 316 CURENLY ESTABLISHES THE COMPOSITION OF THE SUPRIME ELECTORAL TRIBUNAL AS TWO MEMBERS (WITH ALTERNATES) FROM THE MAJORITY PARTY, TWO (WITH ALTERNATES) FROM THE SECOND-PLACE PARTY AND ONE (WITH ALTERNATE) SELECTED BY THE BOARD OF DIRECTORS OF THE MAJORITY PARTY IN CONSULTATION WITH THE SECOND-PLACE PARTY--THIS FIFTH MEMBER BEING PRESIDENT OF THE TRIBUNAL. THE REJECTED REFORM WOULD HAVE CHANGED THIS TO TWO MEMBERS FROM THE MAJORITY PARTY, ONE FROM THE SECOND-PLACE PARTY, ONE FROM THE THIRD-PLACE PARTY AND A PRESIDENT TO CONFIDENTIAL

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BE NAMED BY JOINT SESSION OF CONGRESS. ARTICLE 320 NOW ESTABLISHES THE COMPOSITION OF DEPARTMENTAL ELECTORAL TRIBUNALS AS BEING THE SAME AS THAT OF THE SUPREME ELECTORAL TRIBUNAL. THE REJECTED REFORM WOULD HAVE MODIFIED THE COMPOSITION ALONG LINES SIMILAR TO THAT OF THE PROPOSED REFORM OF THE COMPOSITION OF THE SUPREME ELECTORAL TRIBUNAL, DIFFERING ONLY IN THAT THE DEPARTMENTAL TRIBUNAL PRESIDENT WOULD BE APPOINTED BY THE SUPREME ELECTORAL TRIBUNAL. ARTICLE 321 REGULATES THE COMPOSITION OF LOCAL ELECTORAL BOARDS (AGAIN IDENTICAL TO THE SUPERIOR BOARDS) AND THE PROPOSED REFORM WOULD HAVE MADE CHANGES SIMILAR TO THOSE NOTED ABOVE, WITH THE LOCAL BOARD PRESIDENT BEING NAMED BY THE DEPARTMENTAL TRIBUNAL.

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6. ARTICLES 322 AND 324 REGULATE THE APPOINTMENTS OF JUDGES. ARTICLE 322 SAYS THAT, SHOULD APPOINTMENTS BY THE RESPECTIVE POLITICAL PARTIES TO THE ELECTORAL BOARDS AND TRIBUNALS NOT BE MADE WITHIN THE SPECIFIED PERIOD, THE SUPREME COURT OF JUSTICE (FOR THE SUPREME ELECTORAL TRIBUNAL) AND THE SUPREME ELECTORAL TRIBUNAL (FOR INFERIOR TRIBUNALS AND BOARDS) SHALL MAKE THEM. THE PROPOSED REFORM WOULD ONLY HAVE REPLACED THE SUPREME COURT OF JUSTICE WITH A JOINT SESSION OF CONGRESS. ARTICLE 324 PROVIDES THAT, SHOULD A PARTY ENTITLED TO NAME AN ELECTORAL MAGISTRATE NOT DO SO, THEN ANOTHER MINORITY PARTY MAY, UPON APPROVAL OF ITS PETITION, FILL THAT PLACE. THE PROPOSED REFORM MERLY DELETED THE PROCEDURE TO BE FOLLOWED SHOULD ONLY ONE PARTY PARTICIPATE IN ELECTIONS. ARTICLE 323 CURRENTLY GIVES EACH PARTY PARTICIPATING IN ELECTIONS THE RIGHT TO AN OBSERVER (WITHOUT VOTE) IN ALL ELECTORAL BODIES. THE REJECTED REFORM MADE THIS PROVISION SUBJECT TO ARTICLES 316, 320, 321, 322, AND 324, , BUT, EFFECTIVELY, LEFT IT INTACT.

7. THE LAST REFORM WAS TO HAVE MADE A WORDING CHANGE IN ARTICLE 328, CHANGING IT FROM, "THE PERSONALITY AND RIGHTS OF THE POLITICAL PARTIES AND THE DEFINITION OF THE TWO PRINCIPAL PAR-
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TIES SHALL BE DETERMINED BY LAW" TO "THE DEFINITION, PERSONALITY AND RIGHTS OF POLITICAL PARTIES SHALL BE REGULATED BY ELECTORAL LAW.Z

8. COMMENT: THE ELECTORAL REFORMS, AS FINALLY PASSED WILL DO LITTLE TO RESOLVE THE PRESSING NEED FOR STRUCTURAL CHANGE IN THE ELECTORAL SZSTEM, ALTHOUGH THEY REPRESENT SOME IMPROVEMENT. SEPARATION OF ELECTORAL LAW FROM THE CONSTITUTION WILL FACILITATE THE MECHANICS OF REFORM, BUT DO NOT, OF COURSE, ASSURE IT. THE OPPOSITION CONTINUES TO BE DISTRUSTFUL OF SOMOZA'S INTENTIONS. SOME OPPOSITIONISTS HAVE INDICATED THAT SOMOZA IS MERELY STALLING FOR TIME, THAT HE FIRST DELAYED IN PROPOSING THE REFORMS, THEN WAITED UNTIL THE LAST LEGAL DAY TO RETURN THEM TO CONGRESS(AFTER, THEY ADD, DELAYING THE INAUGURATION OF CONGRESS) AND THEN REJECTED THE TRULY SUBSTANTIVE REFORMS WHILE CALLING FOR DIALOG. (NOTE: WE WERE TOLD THAT DELAY IN RETURNING REFORM BILL WAS BECAUSE SOMOZA STILL HOPED FOR A BREAKTHROUGH ON DIALOG.) EMB BELIEVES THT, INDEED, THE MOST IMPORTANT POINTS OF ELECTORAL REFORM REMAIN TO BE ACCOMPLISHED. AS NOTED IN REFTEL B, THE VOTER REGISTRATION/IDENTIFICATION IS CRUCIAL IF AN EFFECTIVE CHECK ON ELECTORAL FRAUD IS TO EXIST.

THIS, PLUS THE COMPOSITION OF THE ELECTORAL TRIBUNALS ARE THE
TWO CENTRAL POINTS OF THE ELECTORAL SYSTEM AND, UNTIL SUCH TIME
AS THEY ARE EFFECTIVELY DEALT WITH, THERE CAN BE NO HOPE OF
CONFIDENCE IN FREE ELECTIONS ON THE PART OF THE RESPONSIBLE
OPPOSITION.

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